

**A SHORT TOUR OF MENTAL AND
SUBSTANCE-RELATED DISORDER COMMITMENT
CONDUCTED BY
THE CONTINUINGLY HONORABLE L. JAY STEIN**

1) Code Sections

A) Serious mental Impairment - §229

B) Chronic Substance-related disorder - §125

2) Serious Mental Impairment

A) Definition

"Seriously mentally impaired" or "serious mental impairment" describes the condition of a person with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who because of that illness meets any of the following criteria:

- a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.
- b. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment.
- c. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.

B) Mental Illness

"Mental illness" means every type of mental disease or mental disorder, except that it does not refer to mental retardation as defined in section 222.2, subsection 5, or to insanity, diminished responsibility, or mental incompetency as the terms are defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules.

D) Serious Emotional Injury

"Serious emotional injury" is an injury which does not necessarily exhibit any physical characteristics, but which can be recognized

and diagnosed by a licensed physician or other qualified mental health professional and which can be causally connected with the act or omission of a person who is, or is alleged to be, mentally ill.

3) Admission

A) A mentally ill person may make a voluntary application for admission. §229.2(1)

B) Juvenile Admission is a different story.

I. The Parent, Guardian, or Custodian may make application for a minor as a **voluntary** [emphasis added] patient.

II. The Chief Medical Officer shall then provide separate prescreening interviews of applicant and minor to assess the family environment and the appropriateness of the application.

III. During the interview, the chief medical officer shall inform the minor orally and in writing that the minor has the right to object to the admission.

IV. If the Chief Medical Officer determines that the admission is Appropriate but the minor objects, the parent, guardian or custodian must petition the **Juvenile Court** [emphasis added] for approval of the admission before the Minor is admitted.

V. The Juvenile Court shall determine whether the admission is in the best interest of the minor and is consistent with the minor's rights.

VI. The Juvenile Court may hospitalize a minor who objects to hospitalization only after a hearing where it is shown by clear and convincing evidence that:

- a) The minor needs and will substantially benefit from treatment;
- b) No other setting which involves less restriction of the minor's liberties is feasible for treatment;

See §229.2(2)(a-f).

C) Involuntary Admission

See §229.6 *et seq.* Generally requires a "person with knowledge of the facts" to file an application accompanied by an affidavit from another person with

such knowledge or a “written statement” from a physician (does not need to be under oath) to be filed with the Clerk of Court. The statements are then reviewed by the Court and, if the facts alleged would be sufficient for commitment if proved, then the Court issues an order for immediate commitment on an emergency basis. *Query: Should an application that does not qualify for immediate custody be allowed at all?* The “Respondent” (not Defendant) is then appointed an attorney and the hearing must be set no sooner than two days and no later than five days from the issuance of the order.

The Respondent has the right to an independent examination by a Doctor of the Respondent’s choice and the right to all discovery methods in civil cases.

“Dual Filings” (filing for commitment as both Seriously Mentally Impaired **and** Substance-related disorder) are allowed.

D) The Hearing

See §229.12. The Respondent has the right to be present at the hearing. The Court can exclude the Respondent on motion of the County Attorney only if the Court determines that the Witness’s testimony is likely to cause the RESPONDENT severe emotional Trauma. The Court cannot exclude the Respondent if his/her presence will cause the Witness severe emotional trauma.

A written medical report must be submitted by a physician and that physician must testify in person unless the Court allows the physician to testify by phone for good cause shown.

There is a presumption in favor of the Respondent and the elements of Serious Mental Impairment must be proven by “**clear and convincing**” evidence.

The Respondent’s Attorney is required to explain to the Respondent the Respondent’s rights prior to the hearing. (IRCP12.17). The Court is required to inquire into whether or not this has happened prior to the hearing.

IRCP 12.19(2) requires that the Respondent be present at the hearing unless the Respondent’s Attorney

stipulates in writing that she/he has spoken to the Respondent prior to the hearing and concluded that the Respondent cannot make any meaningful contribution AND THE BASIS FOR SUCH CONCLUSIONS. **Watch out for this one!**

IRCP 12.20 requires that the hearing be recorded and the recording be maintained for at least three years or until the Respondent has been released from involuntary custody, whichever is longer.

If the facts are proved by clear and convincing evidence, then the Court has numerous treatment options including full time custody and treatment, outpatient treatment or alternative placement.

E) Appeals

- 1) If the original hearing was before a Judicial Hospitalization Referee or a Magistrate Judge, the Respondent is entitled to a **de novo** commitment hearing before the District Court. Notice of Appeal must be filed within ten days. If the District Court decision goes against the Respondent, then an appeal of that decision may be made to the Supreme Court.
- 2) The Respondent is also, with some limits, allowed to file for a Writ of Habeas Corpus.
- 3) The District Court may also be asked to hold Placement hearings, etc.

F) Substance-related disorder Procedure

Pretty much the same with some exceptions:

- 1) Where a Mental Health Commitment can last for years, Substance-related disorder commitments last a maximum of forty-five days – a fifteen day evaluation period and thirty days of treatment.
- 2) At the end of the forty-five day period, the commitment can be extended if **prior to the expiration of the forty-five day period** a hearing is held showing that the subject continues to be a person with a substance-

related disorder. I am unaware of any such hearing ever being held.

- 3) The only choices after hearing for the Court are full-time treatment or part-time treatment. There is no alternate placement available.

G) Emergency procedure

- 1) These procedures apply only when it appears that a person should be detained due to serious mental impairment, no application for involuntary commitment is on file or involuntary commitment in place and the Court and Clerk's office are unavailable (i.e., closed).
- 2) A peace officer with reasonable grounds to believe that a person mentally ill and a danger to self or others may transport the person to the nearest facility without being liable to the person.
- 3) A person believing that a subject is mentally ill and a danger as described above may also transport the person to the facility or hospital.
- 4) The peace officer, orally or in writing, shall inform the examining physician of the circumstances of the matter to the examining physician. An individual not a peace officer who brings another individual to the hospital must give an oral description.
- 5) The examining physician may order treatment of the person, including chemotherapy, but only to the extent necessary to preserve the person's life or control inappropriate behavior.
- 6) The examining physician then must communicate with the nearest available magistrate who then gives oral instructions to release or hold the person. The magistrate may also direct that the person be transported to another facility.
- 7) If ordered detained then the Magistrate must file a written order on the next working day

with the Clerk of Court where it is anticipated an application may be filed.

- 8) The chief medical officer may detain and care for the person for a 48 hour period excluding weekends and holidays unless the matter is earlier dismissed by the magistrate. The chief medical officer may continue to provide treatment, including chemotherapy, necessary to prevent the Respondent from harming him/herself or others during this period.
- 9) **N.B., if the person is the subject of an arrest warrant or otherwise the subject of police interest, there is a very complicated system of orders and notification of police authorities as to the person's release. These will not be discussed here.**

H) Rights & Privileges of Hospitalized Persons

- 1) Prompt evaluation, necessary psychiatric services and additional care and treatment as indicated by the patient's condition.
- 2) Timely development of a comprehensive individualized treatment plan.
- 3) The right to refuse shock therapy or chemotherapy unless these treatments are specifically consented to by the patient's next of kin or guardian. (What about a person named as an attorney-in-fact for health care decisions?) If there is no next of kin or guardian, then the chief medical officer may request an order from the District Court which authorized the respondent's hospitalization.
- 4) Also, the respondent is entitled to the protection of the respondent's constitutional rights and enjoyment of any other legal, medical, religious, social, political personal and working rights and privileges which the respondent would have if not hospitalized or detained. If such rights are restricted, then

the physician's direction to that effect must be noted in the person's medical record.

I) Important Cases

- 1) Evidence of mental illness, by itself, does not establish grounds for commitment. In the Interest of J.P., 574 N.W.2nd 340 (Iowa 1998).
- 2) Finding of Emotional trauma is insufficient basis for involuntary hospitalization, but rather, code requires "serious emotional injury." *id.*
- 3) To find that a person is a danger to himself or others, and thus is "seriously mentally impaired" within the meaning of Iowa law, there must be evidence of a recent overt act, attempt or threat. U.S. v. BH, 466 F. Supp. 2nd 1139 (ND Iowa 2006). THERE IS A VERY LONG LINE OF CASES ON THIS POINT.
- 4) Being irritating enough that others constantly beat the crap out of you is not danger to self or others. In the Matter of Foster, 426 N.W. 2nd 374 (Iowa 1988).
- 5) "Overt act" in context of Civil Commitment proceeding, connotes past aggressive behavior or threats by Respondent manifesting probable commission of dangerous act upon self or others that is likely to result in physical injury. *id.*
- 6) Court appointed psychiatrists and hospitals, requested by the Court to render an opinion regarding a patient's mental health, are entitled to absolute quasi-judicial immunity from suit as they are acting as an arm of the Court. Muzingo v. St. Luke's Hospital, 518 N.W. 2nd 776 (Iowa 1994).
- 7) A Respondent must be shown to be presently Seriously Mentally Impaired at every hearing – appeal, placement, habeas corpus, etc. B.A.A. v. Chief Medical Officer, University of Iowa Hospitals, 421 N.W. 2nd 118 (Iowa 1988).

- 8) A finding of Serious Mental Impairment is not, by itself, a finding of incompetency due to mental illness. §229.27.